



DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Jim Poolman
Commissioner of Insurance

REQUEST FOR PROPOSAL

TO: Potential Bidders

FROM: Jim Poolman, Commissioner

DATE: July 26, 2006

SUBJECT: Request for Proposal – No. 401-02-06

North Dakota Insurance Commissioner Jim Poolman is requesting written proposals from selected firms to develop, prepare and administer insurance licensing examinations for persons seeking to obtain insurance producer licenses in the state.

Proposals must be received at the North Dakota Insurance Department before the close of business on August 18, 2006. Proposals may be sent electronically.

The Department requests proposals for administering insurance license examinations, preparing and reviewing the content of the examinations, grading examinations, receiving and processing examination registration forms and reporting the results of each candidate's examination to the Department. The terms of the proposed contract are set forth in Appendix B.

Contractor's sole source of compensation will be the examination fees collected from the testing candidates.

The proposals will be evaluated using the following criteria:

1. Demonstrated proficiency in providing similar license examination services for North Dakota and other regulatory jurisdictions and/or the insurance industry: 30%
2. Personnel capabilities including education, experience and skills required to provide the service, as well as sufficient resources to meet the needs of the Department: 30%
3. The proposed examination testing fees and expense structure: 40%

The recommendation to retain a specific contractor will be based on the highest composite score and will explain the rationale for the selection of the specific contractor. The recommendation will be presented to the Commissioner who will accept, reject, or modify the recommendation. The Commissioner reserves the sole discretion to select a contractor.

After applying any reciprocal preference, the lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined as follows:

$$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Total Points for Cost Available} = \text{Awarded Points}$$

Specifically, the proposal should include the following:

1. A description of the contractor's ability to perform license testing services.
2. A description of the level of proficiency of the company in performing similar services for other state insurance departments, providing specific information including the departments for which similar services have been provided and the number of years that services have been provided for those departments.
3. The proposed testing fees.
4. The procedure to be followed in developing examinations.
5. The manner in which the testing services will be provided.

Resumes of those professionals involved in developing the examinations and in administering the services should be included. Contractors who have not previously contracted with the North Dakota Insurance Department should provide at least three client references.

The contractor will be solely responsible for paying all expenses associated with providing the services and its sole source of consideration for the performance of the services and recovering the expenses shall be the examination fees collected from the testing candidates.

Staff will make recommendations to the Commissioner regarding the selection of the contractor. The Commissioner has the right to enter into competitive negotiations with qualified bidders for the purpose of selecting a contractor to perform all or a portion of the identified work. The Commissioner retains the right to reject any and all proposals.

The successful contractor must apply for and be approved by the North Dakota Secretary of State's office as an Approved Vendor. See the following website for more information: <http://www.nd.gov/sos/businessserv/registrations/vendor.html>.

This Request for Proposal is subject to the provisions set forth in the attached Appendix A entitled "Additional RFP Terms and Conditions".

The successful contractor must be willing to enter into a contract with terms as shown in the attached Appendix B.

This Request for Proposal does not, by itself, obligate the Commissioner.

Please submit an original of the proposal to:

Laurie A. Wolf
Director of Licensing and Investigations
North Dakota Insurance Department
600 East Boulevard Avenue, Dept. 401
Bismarck, ND 58505
(701) 328-2442
lwolf@nd.gov

ADDITIONAL RFP TERMS AND CONDITIONS

1.05

Assistance to Offerors with a Disability

Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made.

1.09

Amendments to the RFP

If an amendment to this RFP is issued, it will be provided to all offerors that were mailed a copy of the RFP and to those that have requested a copy of the RFP from the procurement officer.

4.03

Standard Contract Provisions

The successful offeror will be required to sign and submit the contract attached to this RFP (Appendix B). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. No alteration of these provisions will be permitted without prior written approval from the purchasing agency.

4.05

Additional Terms and Conditions

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

4.06

Supplemental Terms and Conditions

Proposals including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's rights under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

4.19

Open Records Laws - Confidentiality

Any records that are obtained or generated by the contractor under this contract are subject to North Dakota open records law regarding public records and handling of confidential information.

4.23

Disputes - Applicable Law and Venue

Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota.

7.01

Authorized Signature

An individual authorized to bind the offeror to the provisions of the RFP must sign all proposals.

7.02

State Not Responsible for Preparation Costs

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

7.03

Conflict of Interest

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

7.04

Offeror's Certification

By signature on the proposal, an offeror certifies that it complies with:

- a) the laws of the State of North Dakota;
- b) North Dakota Administrative Code;
- c) all applicable local, state, and federal laws, code, and regulations;
- d) the applicable portion of the Federal Civil Rights Act of 1964;
- e) the Equal Employment Opportunity Act and the regulations issued by the federal government;
- f) the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- g) all terms, conditions, and requirements set forth in this RFP;
- h) a condition that the proposal submitted was independently arrived at, without collusion;
- i) a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- j) a condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

7.12

Right of Rejection

The State reserves the right to reject any proposals, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

The State reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an offeror determined to be not responsible. The State also reserves the right to refrain from making an award if it determines it to be in its best interest.

7.13

Clarification of Offers

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

7.15

Preference Laws

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident bidder. A “resident” North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website:

http://egov.oregon.gov/DAS/PFSS/SPO/reciprocal_detail.shtml or contact the North Dakota State Procurement Office at 701-328-2683.

7.16

Contract Negotiation

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal.

If contract negotiations are commenced, they will be held:

North Dakota Insurance Department
600 East Boulevard Avenue, Dept. 401
Bismarck, ND 58505

If contract negotiations are held, the offeror will be responsible for all cost including its travel and per diem expenses.

7.18

Notice of Intent to Award - Offeror Notification of Selection

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award and send copies to all offerors. The Notice of Intent Award will set out the names and addresses of all offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the Notice of Intent to Award.

The successful offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful offeror and the State sign the contract.

7.19

Protest and Appeal

North Dakota law provides that an interested party may protest a solicitation.

If an interested party wishes to protest the content of this RFP, the protest must be received, in writing, by the procurement officer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract.

If an offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

AGREEMENT

AGREEMENT, made this first day of _____, 2006, by and between the _____ (hereinafter referred to as CONTRACTOR), with offices located at _____, and OFFICE OF THE INSURANCE COMMISSIONER of the State of North Dakota (hereinafter referred to as "DEPARTMENT"), a state agency established by the North Dakota Constitution and organized and administered under N.D. Cent. Code Title 26.1 with the Insurance Commissioner's offices located at 600 East Boulevard Avenue, Dept. 401, Bismarck, ND 58505.

WHEREAS, the DEPARTMENT desires to contract with CONTRACTOR to administer insurance license examinations, to prepare and revise the content of these examinations, to grade such examinations, to receive and process exam registration forms, and to report the results of each candidate's examination to the DEPARTMENT; and

WHEREAS, CONTRACTOR is in all respects qualified to perform such services and desires to perform such services for the DEPARTMENT; and

WHEREAS, both parties agree that the desired services can be performed in the manner hereinafter agreed upon.

NOW, THEREFORE, CONTRACTOR and the DEPARTMENT, in consideration of the mutual covenants and agreements set out herein, agree that the aforementioned services shall be provided in accordance with the terms and conditions hereinafter set out.

1. **DEFINITIONS**

Whenever used in this Agreement, the term:

1. "Candidate" shall mean an individual duly authorized to take an examination pursuant to N.D. Cent. Code Title 26.1 and administrative rules adopted by the Commissioner.

2. "Commissioner" shall mean the appointed or elected individual authorized by North Dakota law to legally bind THE DEPARTMENT to the terms and conditions of this Agreement.

3. "Contractor" shall mean the _____.

4. "Department" shall mean the North Dakota Department of Insurance.

5. "Examination" shall be synonymous with "test" and "exam" and shall mean a method of assessing minimum competence for entry into the insurance business.

6. "Examination review committee" shall mean that certain advisory committee established by THE DEPARTMENT for the purpose of reviewing the examinations provided for by this Agreement.

7. "Item" shall mean an examination question.

8. "Rules" shall mean administrative rules or regulations adopted by the Commissioner.

9. "Test site" shall mean the location(s) at which examinations shall be administered.

2. DURATION OF AGREEMENT

This Agreement shall begin October 1, 2006, and continue through September 30, 2008, unless terminated pursuant to Section 13 of this Agreement.

3. EXAMINATIONS AND PROGRAM DEVELOPMENT AND MAINTENANCE

a. CONTRACTOR agrees to develop, maintain, and validate examinations and to provide exam administration services for the DEPARTMENT for purposes of testing candidates for licensure. The DEPARTMENT agrees that CONTRACTOR shall be the exclusive provider of said services for the term of this Agreement, from the first day of October, 2006, and that the DEPARTMENT shall not itself test candidates for licensure nor authorize any other individual, partnership, nonprofit corporation, corporation, institution, or other entity to develop and/or administer such examinations during this period. The DEPARTMENT further agrees that CONTRACTOR shall be compensated in accordance with the terms of this Agreement and the schedule of fees set out in Appendix 1.

b. The aforementioned examination services which CONTRACTOR will provide the DEPARTMENT include developing and administering examinations and reporting results on examinations for the following types of insurance licenses:

1. Life and Annuity (Part I – Product)
2. Life and Annuity (Part II – Laws and Regulations)
3. Accident and Health (Part I – Product)
4. Accident and Health (Part II – Laws and Regulations)
5. Life and Annuity, Accident and Health (Part II – Laws and Regulations)
6. Property (Part I – Product)
7. Casualty (Part I – Product)

8. Casualty (Part II – Laws and Regulations)
9. Property and Casualty (Part II – Laws and Regulations)
10. Consumer Credit
11. Crop Insurance
12. Bail Bonds
13. Legal Expense Insurance
14. Personal Lines

c. Such examinations shall consist of lists of objective multiple-choice questions or problems (also referred to as “items”), and each exam shall be of a length and duration as determined by CONTRACTOR. All exam items developed or provided by CONTRACTOR shall be the property of CONTRACTOR and may be copyrighted in CONTRACTOR’S name. The content of these examinations shall be based upon the North Dakota examination content outlines, developed and periodically revised by CONTRACTOR and the DEPARTMENT. Such outlines shall be approved by the DEPARTMENT prior to use in constructing examinations for distribution to candidates.

d. CONTRACTOR shall exercise its best efforts to monitor changes in the State of North Dakota Insurance Code, Rules and Regulations, to revise content outlines and to create and implement new examination items annually. The DEPARTMENT agrees to inform CONTRACTOR, in writing, of any changes in the State of North Dakota Insurance Code, Rules and Regulations, which may establish a need to revise the content outlines or examination questions.

e. The DEPARTMENT may reject any examination question(s) which contain subject matter that is not in compliance with the State of North Dakota Insurance Code or the Rules and Regulations of the DEPARTMENT.

f. CONTRACTOR shall develop, subject to the DEPARTMENT’S review and approval, a Licensing Information Bulletin containing examination content outlines (as approved by the DEPARTMENT), the process of applying for a license, registering for admission to an examination, rules regarding candidate conduct during the examination, sample examination questions, appropriate forms and applications, and preclicensing requirements, if any. Bulletins shall be printed by CONTRACTOR and provided in sufficient quantities to be available, without charge, to all candidates upon request from CONTRACTOR, the DEPARTMENT, and other locations as mutually agreed.

g. CONTRACTOR shall provide adequate security for examinations administered as well as for the item bank itself.

h. CONTRACTOR will, at the direction of the DEPARTMENT, establish an Examination Review Committee consisting of industry representatives in the State of North Dakota and the DEPARTMENT staff to review the scope of the subjects to be examined and examination items. The committee members shall be unsalaried; however, certain committee meeting expenses may be paid for by CONTRACTOR, subject to the specific advance agreement with the DEPARTMENT as to their amount and nature. The Examination Review Committee shall meet annually to develop, review, discuss and evaluate examination items.

i. CONTRACTOR shall eliminate or revise items on a particular topic area as necessitated by changes in laws, standards, rules, regulations, or at the request of the Commissioner. Revisions will be implemented on a mutually agreeable schedule.

j. CONTRACTOR shall monitor the difficulty level of the various items in order to produce examinations of comparable difficulty. CONTRACTOR will calculate a difficulty index for each item for this purpose and shall be prepared to demonstrate that exams are equivalent in degree of difficulty.

k. CONTRACTOR shall, at the request of DEPARTMENT, review and rescore a candidate's examination to verify the validity of the examination results. CONTRACTOR shall perform the review at no cost to the DEPARTMENT or the examinee.

4. EXAM ADMINISTRATION

a. CONTRACTOR shall select and establish, at its own expense, test sites in the Bismarck area and the Fargo/Moorhead area for administration of examinations a minimum of five days per week in each site or other mutually agreed upon schedule. North Dakota candidates will also be able to test at CONTRACTOR test sites located in other states. CONTRACTOR agrees that changes to the testing schedule may be made with the consent of the DEPARTMENT to meet testing demand.

b. CONTRACTOR shall provide all services and materials necessary for test administration. CONTRACTOR shall equip and manage its examination sites, so that candidates are able to secure appointments and take examinations within a maximum of five business days of the request for such appointments. CONTRACTOR shall prepare for administration of the examinations, including providing adequate testing space for the expected number of candidates and arranging for testing facilities that are handicapped accessible. Special provisions will be made, at no additional charge, for handicapped candidates who cannot take the examination on computer.

c. CONTRACTOR shall provide trained personnel (proctors) to operate the test sites. They will be trained and monitored to follow established procedures. CONTRACTOR shall provide training and information to ensure uniform, secure, and efficient test administration. CONTRACTOR shall provide its test site personnel with a detailed Proctor's Manual which will describe their responsibilities fully, as well as the administrative procedures and security measures required by CONTRACTOR in the administration of any examination.

CONTRACTOR headquarters personnel shall maintain close contact with proctors. During regular business hours, every proctor will be able to call CONTRACTOR headquarters if a problem or irregularity in the administration of an examination occurs, thereby putting the proctor in direct contact with the appropriate individual. CONTRACTOR will evaluate any complaint by the DEPARTMENT concerning the performance of North Dakota test centers or test proctors and report findings to the DEPARTMENT within 10 days of notice of complaint.

d. The DEPARTMENT shall have the right to visit test sites, provided proper DEPARTMENT identification is presented to the test site personnel and provided such visits do not disrupt the business activities of the test site.

e. CONTRACTOR shall investigate all reports of testing irregularities and will notify the DEPARTMENT within 10 days of each report of testing irregularities which in the judgment of CONTRACTOR has a foundation in fact and which brings into question the validity of an individual's examination results. CONTRACTOR will also solicit feedback from proctors and examinees on the effectiveness of its administrative procedures in order to make its system of administration as security and efficient as possible.

f. CONTRACTOR shall score all examinations and provide the DEPARTMENT with candidate information and examination results in a manner and form acceptable (including paper or electronic media) to the DEPARTMENT within two working days of each examination date. Such information may include, but is not limited to, the name, address, and social security number of each candidate tested, the type(s) of examination(s) taken, and each candidate's exam results in terms of score and passing or failing status. CONTRACTOR will provide the DEPARTMENT with summary statistics regarding the number of candidates tested and percentages of pass/fail by type of examination. This data shall be provided to the DEPARTMENT at least quarterly. The statistics maintained on each type of examination and examination item will also be provided as requested.

g. Upon completion of their exam, candidates will be notified at the test site of their exam results, including a pass/fail indication, total score, and a score on each subsection of the test. Each candidate's printed score report will be mailed to the candidate within two working days of the examination.

h. CONTRACTOR, if requested to do so, will provide assistance to the DEPARTMENT in establishing an appropriate passing score for each exam. The DEPARTMENT, however, remains responsible for setting the actual passing score utilized for such exams.

5. PRELICENSING REQUIREMENTS

The parties agree that the examination content outlines, as described herein, and approved by the DEPARTMENT, may also serve as the outlines for the DEPARTMENT'S prelicensing requirements, if any, during the term of this Agreement and any renewals or extensions thereof. The DEPARTMENT reserves the right to continue using such outlines, after the term of this

Agreement, without the benefit of future revisions by CONTRACTOR and without the right to associate the outlines with CONTRACTOR in any way.

6. COMPENSATION

a. In order to compensate CONTRACTOR for services provided to the DEPARTMENT, the parties agree that CONTRACTOR shall collect examination fees from candidates in accordance with the Fee Schedule set out in Appendix 1.

b. CONTRACTOR shall collect its examination fees from candidates when the candidate registers to take an exam.

c. CONTRACTOR agrees that the examination fees for the services specified in this Agreement shall remain as specified in the Fee Schedule set out in Appendix 1 through September 30, 2008.

d. Contractor's sole source of compensation for providing services for the Department is the examination fees collected from the candidates.

7. QUALITY CONTROL AND CONFIDENTIAL CARE OF DATA

a. CONTRACTOR shall provide services in a manner that shall reflect is high regard for quality and that is consistent with the state-of-the-art and science of test construction, scoring, and validation.

b. CONTRACTOR shall construct and administer its examinations in a manner that is consistent with applicable laws.

c. CONTRACTOR agrees to protect the confidentiality of all files, data, or other materials provided by the DEPARTMENT or any license candidate. Any such data shall be restricted in use and purpose to the performance of this Agreement.

d. CONTRACTOR agrees to take all reasonable steps necessary to safeguard data, files, reports, or other information from loss, destruction, or erasure.

e. CONTRACTOR shall be responsible for all acts of omission or commission by its personnel, shall defend the same against claims and/or suits, and shall be responsible for any liability resulting from breach or failure of CONTRACTOR to perform its obligations under this Agreement.

f. The DEPARTMENT shall be responsible for any of its unilateral action(s) and shall defend such unilateral action(s) against claims and/or suit. The DEPARTMENT shall be responsible for any liability resulting from breach or failure of the DEPARTMENT to perform its obligations under this Agreement, subject to the limitations of the laws of the State of North Dakota.

g. Recognizing that the DEPARTMENT has the right and obligation to set the license qualification standards for North Dakota, as authorized by state law, and recognizing that CONTRACTOR has a desire to protect its reputation from possible damage should the DEPARTMENT set extremely high or extremely low standards, CONTRACTOR and the DEPARTMENT both have the right to terminate the Agreement, with six months notice, if the DEPARTMENT and CONTRACTOR are unable to negotiate mutually agreeable standards, notwithstanding the provisions of Section 14.

h. The DEPARTMENT agrees to notify CONTRACTOR, in writing, of any incident that may give rise to liability on the part of CONTRACTOR within 10 days of the date of discovery of the incident.

i. CONTRACTOR agrees to notify the DEPARTMENT, in writing, of any incident that may give rise to liability on the part of the DEPARTMENT within 10 days of the date of discovery of the incident.

8. OWNERSHIP OF ITEMS, EXAMINATIONS, AND CANDIDATES' NAME AND ADDRESSES

a. All examinations and items developed by CONTRACTOR under the provisions of this Agreement, including statistical data utilized in developing and/or scoring said examinations, are and shall be the property of CONTRACTOR and may be copyrighted in CONTRACTOR'S name.

b. No examination or item developed by CONTRACTOR under the provisions of this Agreement shall be transmitted by the DEPARTMENT, by gift, loan, lease, sale, or otherwise to any individual or organization, public or private, for any purpose without the prior knowledge and written approval of CONTRACTOR.

c. CONTRACTOR shall not use the names and addresses of candidates for any purpose other than to perform its duties under this Agreement, without the written permission of the DEPARTMENT.

9. APPENDICES

Both CONTRACTOR and the DEPARTMENT agree that all appendices, heretofore mentioned above, shall be incorporated into this Agreement as if fully set out herein.

10. SUBCONTRACTING

CONTRACTOR reserves the right to enter into agreements with other individuals, partnerships, nonprofit corporations, corporations, institutions, or other entities in order to fulfill the terms of this Agreement. The Commissioner shall have the right to approve subcontracts relating to examination development and administration.

11. ASSIGNMENT OF AGREEMENT

It is hereby agreed by the parties that this Agreement is personal to CONTRACTOR and the DEPARTMENT. Both parties agree that neither this Agreement nor any interest therein shall be assigned or transferred by CONTRACTOR or the DEPARTMENT to any individual, partnership, nonprofit corporation, corporation, institution, or other entity, except as expressly authorized in writing by the other party hereto.

12. ENTIRE AGREEMENT AND MODIFICATION THEREOF

a. This Agreement constitutes the entire Agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or contracts, either verbal or written, between the parties hereto concerning examination services and those additional services set out herein.

b. No amendment to this Agreement shall be effective unless it is in writing and signed by the Commissioner, or his/her authorized representative, and a duly authorized officer of CONTRACTOR.

13. TERMINATION OF AGREEMENT

a. Anything in this Agreement to the contrary notwithstanding, the DEPARTMENT shall have the right to terminate this Agreement at any time after CONTRACTOR has failed to comply with the terms of this Agreement and shall have failed to remedy such noncompliance within 60 days of written notice of noncompliance from the DEPARTMENT, unless said notice has been expressly waived in writing. CONTRACTOR shall remain obligated to furnish those services for which compensation has been received and shall not be relieved from such obligations until such services are rendered. Nothing contained in this section shall be construed as a waiver of any right that the DEPARTMENT has to damages for breach.

b. Anything in this Agreement to the contrary notwithstanding, CONTRACTOR shall have the right to terminate this Agreement and to cease to furnish examination services, if the DEPARTMENT has failed to comply with the terms of this Agreement, or for any reason discontinues its examination program, or withdraws CONTRACTOR'S exclusive right to administer said examinations and such failure is not corrected within 60 days after delivery of written notice of such failure to the DEPARTMENT, unless said notice has been expressly waived in writing. Nothing contained in this section shall be construed as a waiver of any right that CONTRACTOR has to damages for breach.

c. If CONTRACTOR, during the term of this Agreement, shall file for bankruptcy or be adjudicate bankrupt, or have any judgment of bankruptcy or insolvency entered against it, the DEPARTMENT may terminate the Agreement without notice.

14. FORCE MAJEURE

CONTRACTOR shall not be responsible for delays or failures in performance resulting from acts beyond the control of CONTRACTOR. Such acts shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental codes or regulations superimposed after the fact, failures of public or private carrier or utility, fire, communication line failures, power failures, earthquakes, or other disasters.

15. LAW GOVERNING

It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of North Dakota, both as to interpretation and performance.

16. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held to be illegal or in conflict with the laws of the State of North Dakota by a court of general jurisdiction, the validity of the remaining parts or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

17. NOTICES

The parties agree that to be effective for purposes of this Agreement, any notice delivered to either party must be in writing and transmitted by United States Registered Mail, postage prepaid to the appropriate address as follows:

[Contractor's address]

Insurance Commissioner
North Dakota Insurance Department
600 East Boulevard Avenue, Dept. 401
Bismarck, ND 58505

18. AGREEMENT AND PROPOSAL LANGUAGE

The parties recognize that, where certain provisions of this Agreement differ from CONTRACTOR'S proposal and presentations, the provisions of this Agreement shall serve as the final decision and agreement of both parties. In the event of conflict in terms, the terms of this Agreement will prevail.

19. COPIES OF AGREEMENT

The parties agree that this Agreement shall be executed in duplicate and either copy may be introduced into evidence or used for any purpose without the production of the other.

20. SPOILIATION - NOTICE OF POTENTIAL CLAIMS

CONTRACTOR shall promptly notify STATE of all potential claims which arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the STATE the opportunity to review and inspect the evidence, including the scene of an accident.

21. INSURANCE

a. Required Coverages. CONTRACTOR shall secure and keep in force during the term of this contract, from insurance companies authorized to do business in North Dakota, the following insurance coverages covering the CONTRACTOR for any and all claims of any nature which may in any manner arise out of or result from this contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
2. Automobile liability, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
3. Workers compensation coverage meeting all North Dakota statutory requirements, including: a) an "all states endorsement" to cover claims occurring outside the State of North Dakota if any of the services provided under this contract involve work outside the State of North Dakota; and b) employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance if CONTRACTOR is domiciled outside the State of North Dakota.

b. General Insurance Requirements. The insurance coverages listed above must meet the following additional requirements:

1. Any deductible or self insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR. The amount of any deductible or self retention is subject to approval by the DEPARTMENT.
2. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed and maintained for the term of this contract and any extensions with insurers rated "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. The policies shall be in form and terms approved by the DEPARTMENT. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.

3. North Dakota will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the CONTRACTOR in excess of the minimum requirements set forth above.
4. North Dakota shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insureds. North Dakota shall have the same rights and coverages as CONTRACTOR under said policies. The additional insured endorsement for the commercial general liability policy shall be written on a form equivalent to the ISO 1985 CG 20 10 form, or such other form as approved by the DEPARTMENT, and the endorsement shall not limit or delete North Dakota's coverage in any way based upon North Dakota's acts or omissions.
5. The insurance required in this section, through a policy or endorsement, shall include:
 - a. A "Waiver of Subrogation" waiving any right of recovery the insurance company may have against North Dakota;
 - b. A provision that the policy and endorsements may not be canceled or modified without 30 days' prior written notice to the undersigned DEPARTMENT representative;
 - c. A provision that any attorney who represents North Dakota under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
 - d. A provision that CONTRACTOR's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by North Dakota and that any insurance, self-insurance or self-retention maintained by North Dakota shall be excess of the CONTRACTOR's insurance and shall not contribute with it;
 - e. Cross liability/severability of interest coverage for all policies and endorsements.
6. The legal defense provided to North Dakota under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary.
7. CONTRACTOR shall furnish a certificate of insurance, the additional insured endorsement adding North Dakota as an additional insured, and, if requested, a copy of the insurance policy and all its endorsements, to the undersigned DEPARTMENT representative prior to commencement of this contract.

8. Failure to provide insurance as required in this section is a material breach of contract entitling the DEPARTMENT to immediately terminate this contract.

22. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a DEPARTMENT employee for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out the CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

North Dakota Insurance Department

By: _____
Jim Poolman, Commissioner

Date: _____

[contractor]

By: _____
[name]

Date: _____

APPENDIX 1

Fee Schedule

Exam Type	Candidate Fee
Life and Annuity (Part I – Product)	
Life and Annuity (Part II – Laws and Regulations)	
Accident and Health (Part I – Product)	
Accident and Health (Part II – Laws and Regulations)	
Life and Annuity, Accident and Health (Part II – Laws and Regulations)	
Property (Part I – Product)	
Casualty (Part I – Product)	
Casualty (Part II – Laws and Regulations)	
Property and Casualty (Part II – Laws and Regulations)	
Consumer Credit	
Crop Insurance	
Bail Bonds	
Legal Expense Insurance	
Personal Lines	

Exam fees will provide license candidates with the ability to take the appropriate exam, provided he/she does so within 90 days of [contractor]’s receipt of the fee and completed examination form. There are no refunds.

Candidates shall be subject to [contractor]’s uniform policies, terms, and conditions of examination registration and administration that are utilized on a multi-state basis, as printed and distributed in the Licensing Information Bulletin.

These policies include a reinstatement fee following a missed appointment and an additional fee for express registration.

Registrations will become invalid for candidates who fail to appear for a testing appointment or who fail to cancel or reschedule their appointments with less than three days’ notice. Candidates may reinstate their registrations for the balance of the 90-day valid period by paying a reinstatement fee. That fee is the lesser of _____ or the fee for the exam the candidate was scheduled to take. Candidates will be charged a single reinstatement fee for multiple examinations scheduled for contiguous time slots on the same day.